

AMENDED IN ASSEMBLY APRIL 22, 1999

AMENDED IN ASSEMBLY APRIL 5, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

**No. 738**

**Introduced by Assembly Member Davis**  
**(Coauthors: Assembly Members Firebaugh and Honda)**  
(Coauthors: Senators Baca and Ortiz)

February 24, 1999

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An act to amend Sections 21532 and 21605 of, to add Sections 21545 and 21545.5 to, and to repeal Sections 21547 and 22811.6 of, the Government Code, relating to the Public Employees' Retirement System.

### LEGISLATIVE COUNSEL'S DIGEST

AB 738, as amended, Davis. Public Employees' Retirement System: benefits.

The Public Employees' Retirement Law provides benefits for survivors of eligible members who die before service retirement.

This bill would provide benefits for survivors of ~~state employees~~ *eligible members* who die before service retirement and would authorize persons presently receiving death benefits to elect to instead receive the new benefits.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 21532 of the Government Code  
2 is amended to read:

3 21532. The basic death benefit is payable in all cases  
4 where the retirement system is liable under Section 21530  
5 for either the basic or a special death benefit and the  
6 special death benefit is not payable.

7 The basic death benefit shall consist of:

8 (a) The accumulated contributions of the member.

9 (b) If the member is not an insured member, or is an  
10 insured member eligible for service retirement or the  
11 member is subject to benefits pursuant to Section 21545  
12 or 21547, an amount, provided from contributions by the  
13 state, or a contracting agency, equal to one-twelfth of the  
14 annual compensation earnable by the deceased during  
15 the 12 months immediately preceding his or her death, or  
16 the compensation earnable by the member at the time of  
17 becoming eligible for benefits pursuant to Section 21160  
18 if higher, multiplied by the number of completed years  
19 of current service credited to the member, but not to  
20 exceed one-half of the annual compensation. If the  
21 member is an insured member who is ineligible for  
22 service retirement and is also credited with service as a  
23 local member only that service shall be used in computing  
24 the amount under this subdivision and that amount shall  
25 not be a part of the basic death benefit payable with  
26 respect to the insured member.

27 (c) If the member is a state member, other than a  
28 school member, who dies after becoming eligible for  
29 retirement with more than five but less than six years  
30 credited service, an amount equal to 50 percent of the  
31 annual compensation earnable by the deceased member  
32 during the 12 months immediately preceding his or her  
33 death.

34 The basic death benefit for a member who dies under  
35 the circumstances described in subparagraph (F) of  
36 paragraph (1) of subdivision (a) of Section 21530 shall not  
37 exceed an amount that, when added to the death benefit  
38 paid for the member under the other system, equals the

1 maximum death benefit payable under that system, if the  
2 death is not the result of injury or disease arising out of  
3 and in the course of his or her employment under that  
4 system. However, the benefit shall be at least equal to his  
5 or her accumulated contributions. The basic death  
6 benefit for the member shall be the amount of his or her  
7 accumulated contributions if death is the result of disease  
8 or injury arising out of and in the course of employment  
9 under the other system.

10 SEC. 2. Section 21545 is added to the Government  
11 Code, to read:

12 21545. Upon the death of a ~~state—employee~~ *member*  
13 who has earned the minimum years of service credit for  
14 service retirement applicable to him or her in his or her  
15 last employment preceding death, who dies in  
16 circumstances in which the basic death benefit is payable  
17 other than solely upon the basis of membership in a  
18 county retirement system, or a retirement system  
19 maintained by the university, a monthly allowance shall  
20 be payable as follows:

21 (a) To the member's surviving spouse, an amount  
22 equal to what the member would have received if he or  
23 she had retired for disability pursuant to Section 21423 or  
24 21424 on the date of death and had elected Optional  
25 Settlement 2 and Section 21459. As used in this section, a  
26 "surviving spouse" means a spouse who was married to  
27 the member for at least one year prior to his or her death.

28 (b) To the children under age 18 collectively if there  
29 is no qualifying surviving spouse or the spouse dies before  
30 all of the children of the deceased member are age 18, an  
31 amount equal to one-half of and derived from the same  
32 source as the disability unmodified allowance pursuant to  
33 Section 21423 or 21424 which the member would have  
34 been entitled to receive if he or she had retired for  
35 disability on the date of death. No child shall receive any  
36 allowance after marrying or attaining the age of 18. As  
37 used in this section, a "surviving child" includes a  
38 posthumously born child of the member.

1 Where a member does not have a surviving spouse or  
2 any children under the age of 18 years at the time of  
3 death, no allowance shall be payable under this section.

4 No allowance shall be payable under this section if a  
5 special death benefit is payable.

6 The allowance provided by this section shall be paid in  
7 lieu of the basic death benefit but a surviving spouse  
8 qualifying for the allowance may elect, before the first  
9 payment on account of it, to receive the basic death  
10 benefit in lieu of the allowance.

11 The allowance provided by this section shall be paid in  
12 lieu of the basic death benefit but the guardian of the  
13 minor child or children qualifying for the allowance may  
14 elect, before the first payment on account of it, to receive  
15 the basic death benefit in lieu of the allowance. If an  
16 election of the basic death benefit is made, the basic death  
17 benefit shall be paid to all of the member's surviving  
18 children, regardless of age or marital status, in equal  
19 shares.

20 If the member was eligible for service retirement at the  
21 time of death, a surviving spouse may, instead of electing  
22 the allowance provided by this section, elect to receive an  
23 allowance pursuant to Section 21548 or the guardian of a  
24 minor child may instead elect to receive an allowance  
25 pursuant to Section 21546.

26 If the total of the payments made are less than the basic  
27 death benefit that was otherwise payable on account of  
28 the member's death, the amount of the basic death  
29 benefit less any payments made pursuant to this section  
30 shall be paid in a lump sum as follows:

31 (1) Upon the death of the spouse or minor child, to the  
32 surviving children of the member, share and share alike.  
33 Or, if there are no surviving children, to the estate of the  
34 person last entitled to the allowance.

35 (2) Upon the attainment of age 18 or marriage of the  
36 youngest child, to the surviving children of the member  
37 share and share alike.

38 The board shall compute the amount by which benefits  
39 paid pursuant to this section exceed the benefits that  
40 would otherwise be payable and shall charge any excess

1 against the contributions of the state so that there shall be  
2 no increase in contributions of members by reason of  
3 benefits paid pursuant to the section.

4 The allowance provided by this section shall apply with  
5 respect to state members whose death occurs on or after  
6 January 1, 2000.

7 *This section shall not apply to any contracting agency,*  
8 *unless and until the agency elects to be subject to this*  
9 *section by amendment to its contract made in the*  
10 *manner prescribed for approval of contracts, or in the*  
11 *case of contracts made after the date this section becomes*  
12 *operative, by express provision in the contract making*  
13 *the contracting agency subject to this section.*

14 SEC. 3. Section 21545.5 is added to the Government  
15 Code, to read:

16 21545.5. If an alternate death benefit is being received  
17 on January 1, 2000, by the spouse or children of a state  
18 member who would have been eligible to receive  
19 benefits under Section 21545 if the death had occurred on  
20 and after January 1, 2000, the person receiving that  
21 benefit may, on and after January 1, 2000, elect to instead  
22 receive benefits under Section 21545. The amount of the  
23 benefits shall not be payable for the period between the  
24 date of the member's death and the effective date of  
25 election to receive benefits under this section. The board  
26 has no duty to identify, locate, or notify any person of  
27 eligibility to receive benefits under this section.

28 SEC. 4. Section 21547 of the Government Code is  
29 repealed.

30 SEC. 5. Section 21605 of the Government Code is  
31 amended to read:

32 21605. The insurance benefit shall be the sum of the  
33 following amounts:

34 (a) Five thousand dollars (\$5,000).

35 (b) An amount equal to 50 percent of the annual  
36 compensation earnable by the deceased member during  
37 the 12 months immediately preceding his or her death or  
38 the compensation earnable by the member at the time of  
39 becoming eligible for benefits pursuant to Section 21160  
40 if higher, or if a member also has state service in an

1 employment in which employees are ineligible to be  
2 insured members, a proportionate part of that amount in  
3 the ratio of eligible service to total service. No amount  
4 shall be paid under this subdivision if the member is  
5 eligible for service retirement or the member is subject  
6 to benefits pursuant to Section 21545 or 21547.

7 If this section is in conflict with the provisions of a  
8 memorandum of understanding reached pursuant to  
9 Section 3517.5, the memorandum of understanding shall  
10 be controlling without further legislative action, except  
11 that if the provisions of a memorandum of understanding  
12 require the expenditure of funds, the provisions shall not  
13 become effective unless approved by the Legislature in  
14 the annual Budget Act.

15 SEC. 6. Section 22811.6 of the Government Code is  
16 repealed.

